

Licensing Act 2003 – Representation Form

From:

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Licensing Application No 183679 by BCP Council for an LA03 Premises Licence on the East Cliff Promenade.

Reasons for Representation

I write to register my objections to this application and ask you consider these in the consultation process. If you have a “public” session I would wish to be notified of the same and am prepared to come and make oral representations.

I have tried to group my representations in such a way as to relate to one or more of the four licensing objectives of the Licensing Act 2003, although there are clear overlaps. Many of these relate also to the **Protection of Children from Harm** and I do not repeat them specifically for that. There are also Procedural considerations that should be considered, and I conclude by a submission on the relevant law given the Team’s previously minuted remarks and, I believe, potentially erroneous interpretation of *Daniel Thwaites plc v Wirral Borough Magistrates’ Court* [2008] EWHC 838 (Admin)

Procedural

1. The notice of Application filed is different from the notice posted on lampposts outside in that:
 - a) The description of licensable activities that is anticipated is different on both documents, so that it is not possible to know precisely what is anticipated, in particular, the lines “Entertainment of a similar description e.g. parade or circus” and “indoor sporting event”, which are on the notices placed outside do not appear in the official application. As an aside, quite how you hold an “indoor sporting event” on a beach seems logically impossible.
 - b) In the outside notices the sale of alcohol is restricted to between April and September. No such restriction is mentioned on the official application.
 - c) It is also unclear from either notice whether the times given of between “10.00 and 22.00 each day of the week” refer to the timing of events, the sale of alcohol or both.
2. As a result of the above it is submitted that this application is too vague, wide ranging and erroneously described to be considered effectively and specific objections properly submitted.
3. There would appear to be a clear conflict of interest in the Licensing Team of BCP Council determining an application by and on behalf of BCP Council.
4. I understand that requests for clarification of how often such events are proposed is being met with silence, but this is a very important aspect that we, the public, need to know. Additionally, there are no limitations on the number of events or the dates on which they may held which seems unreasonable and excessive when what is under consideration is a public beach, not enclosed premises with physical limitations on the area involved.

Prevention of Public Nuisance

5. May I respectfully remind the team of the total and utter chaos of the August Bank Holiday of 2020 and the totally repellent state that an unchecked influx of people left on the beach. How are such scenes to be avoided in terms of open-air concerts and the other activities proposed?
6. In that regard, why pick an area of the promenade that has few toilet facilities?
7. There is also a noise/nuisance issue to be considered. Many of the proposed events would be quite loud and for those living immediately above the area, could well be intrusive and potentially harmful, in my block alone we have a centenarian, a nonagenarian and several people over 70, many of whom will be severely impacted by noise at night. Given that the block is immediately above the proposed site, there will be no amelioration of the noise and other disruptions caused.
8. There is also the effect on the environment in general, not only from refuse but also the potential for increased traffic, shortage of parking spaces and the sheer number of people who may be involved.

Prevention of Crime and Disorder

9. This is a self-evident issue. Allowing thousands of people to congregate in a relatively small area, selling alcohol and with ineffective crowd control is just asking for trouble. Policing such events will be extremely expensive and likely to substantially diminish any financial benefit to the Council in leasing out the area for these activities.
10. The application includes off licence sales of alcohol. This will inevitably lead to anti-social behaviour and the risk of people remaining on the beach late into the night, continuing to drink and being noisy, disruptive and causing a nuisance to residents.
11. There is also the issue of drugs and drug related crime, which would inevitably be increased by allowing this application.
12. I live in a block of flats directly above the proposed area and know only too well how much we have to do when large scale events such as the Air Show are held. It costs the management of the block quite a lot to erect barriers to block off entry to our premises from the East Cliff. If this application goes through and we need to do this far more often, are the Council going to pay for barriers? Of course not.

Public Safety

13. Why is this even being considered at this time? We are still in lockdown and nobody knows what is going to be the new norm for events thereafter. How is it proposed that social distancing, if required, will be enforced? Outdoor events will be particularly hard to monitor effectively.
14. We in Bournemouth have been reasonably lucky in the numbers of Covid related deaths and hospital admissions thus far. This will hugely increase risk by allowing large numbers of potentially (possibly) unvaccinated people to congregate in an area that has remained thus far relatively Covid free and is largely residential.
15. Until there are far more detailed Government guidelines in place and the threat of Covid has properly receded, this application would seem premature.
16. Is this the sensible and correct place for the proposed activities? I have already alluded to the lack of toilet facilities in the area and logically the most sensible place for this site would be closer to either Bournemouth or Boscombe pier, where there are better parking and other facilities. Indeed if it were by Bournemouth Pier sales of alcohol could be more easily controlled as there would be

no need for a separate alcohol area; it is closer to the main parts of Bournemouth, closer to the West Cliff, where there are more hotels and tourists, further away from residential areas and generally more sensible.

The Legal Position:

17. It is not the position in law that hard evidence needs to be available as to future risks. It is submitted that the legal position is that for a licensing application such as this is there is a simply overwhelming cadre of authority that a licensing decision-maker is entitled to act on any material which appears to him to be logically probative, including his own local knowledge, hence the perceived conflict of interest. The only boundaries are rationality – a decision to admit evidence must not be perverse – and fairness, in the sense that a party must have the opportunity to comment on that which is being relied upon by others. It is no exaggeration to say that the opposite case – that only evidence admissible in a court is admissible before a licensing authority – is completely unarguable.
18. Not only is the position plain, but there is a good reason for it. Whether the decision-maker is making a judgment on whether a person should be allowed to wield a shotgun, drive a member of the public in his car, run a late-night burger joint or operate a nightclub, the judgment fundamentally involves an evaluation of risk. If there is no risk, there is no need for interference. If there is a significant risk – whether of physical harm or nuisance to the neighbours – then some form of interference, **be it by the imposition of conditions or outright refusal**, may be merited. The evaluation of risk can never be weighed as a matter of fact, as though one is weighing sugar for a recipe. It is a value judgment.
19. Every human activity involves risk, whether it is crossing the road or drilling for oil. Some risks we are not prepared to take. Others we take only with precautions. Others we deem acceptable even without precautions. **Licensing is the process of making such judgments in the public interest, for the protection of others.** There is rarely a single right answer. It is an exercise of local discretion, applying common sense and judgment to the material as it has been presented. **To dismiss material from consideration because it would not pass muster in a court of law is to abandon common sense, wisdom and judgment, and to place the public at risk by ignoring material which may well be probative.**
20. In many instances, there will be very little primary material – the case will turn almost entirely on a value judgment. **Imagine a large capacity nightclub wanting to open in a quiet residential street. What evidence would an experienced local councillor need before reaching a judgment that those departing the club in the middle of the night would be liable to awaken the neighbours? The answer may well be none, other than the primary facts just described. Certainly, it would not be necessary to await the opening of the club in order to test the proposition empirically, any more than a person carrying out a fire risk assessment needs to await an inferno before advising the installation of sprinklers.**
21. Therefore, once it is understood that the job of licensing is not to respond to harm once it has occurred, but to make rational judgments to avert risk, it becomes still clearer that to require evidence, in the sense understood by courts, is to encrust the system with rules which are liable to expose the public to unnecessary risk and work contrary to the pursuit of the objectives of the legislation conferring the discretion.
22. This has not changed following the decision in *Daniel Thwaites plc v Wirral Borough Magistrates' Court* [2008] EWHC 838 (Admin). The general position in licensing is that authorities may act on any material appearing to them to be relevant, whether or not the material would be admitted evidentially in a court. Nothing in the Licensing Act 2003 alters that position. The judgment of Black J in *Thwaites* is often submitted to create some form of evidential threshold for regulatory

intervention, but in fact it was no more than a decision on the individual facts. The Learned Judge certainly did not intend to depart from several decades of binding Court of Appeal authority as summarised in paragraphs 16 – 20 above, and of course could not have done so, nor should the Licensing Team.

Yours Faithfully



Chairman of the Board of Directors
Princes Gate